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In the
Supreme Court of the United States
October Term, 1989

No. 89-478

State of Maryland,

Petitioner,

v.

Sandra Ann Craig,

Respondent.

BRIEF *AMICUS CURIAE* OF VICTIMS OF CHILD ABUSE LAWS NATIONAL NETWORK (VOCAL) In Support of Respondent

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INTEREST OF *AMICUS CURIAE*

This brief is submitted with the written consents of the parties, which consents are on file with the clerk. Originally founded in Minnesota in 1984, Victims of Child Abuse Laws (VOCAL) is a non-profit educational and family advocacy organization comprised of professionals concerned with the proper handling of charges of abuse and of individuals, many of whom have been falsely accused

of violations of child protection laws. VOCAL has over 130 affiliated chapters throughout the United States, including the National Association of State VOCAL Organizations. Total membership in VOCAL is estimated at 10-12,000.

VOCAL's beginnings make clear its interest in this case. VOCAL was founded in the aftermath of a child sexual abuse scandal in Jordan, Minnesota, in which nearly two dozen adults were falsely accused of engaging in a variety of sex acts with their own and others' children and of committing other abhorrent crimes. As the former targets of false accusations of child abuse, many of whom have been through the ordeals of arrest and/or prosecution, the members of VOCAL bring to the current debate regarding the investigation and prosecution of child abuse cases an important and unique perspective.

INTRODUCTION

Although psychologists, social workers, police and prosecutors have been well aware of the sexual abuse of children both within and outside of the family for decades, it wasn't until relatively recently that the problem became the subject of great public concern. In part due to the rape awareness movement led by feminists and advocates for rape victims and to advancements in the social sciences, during the late 1970s and early 1980s child sexual abuse was uncovered as a widespread social problem. As one writer recently remarked,

> [c]hild sexual exploitation has emerged in only ten years from obscurity to become a major crime of major proportions. What is even more remarkable than our recent "discovery" of child sexual abuse is the fact that it has remained hidden so long.[1]

Amicus views the emergence of child sexual abuse as a major social concern to be a positive social development and does not wish to suggest that society ought to return to a time when child sexual abuse could not be confronted openly. In fact, Amicus specifically believes that the position taken by it here will contribute to further openness with respect to exposing the horrors of child abuse.

ARGUMENT

I. The severe stigma suffered by those accused of child sexual abuse necessitates the safeguarding of the accused's constitional rights from initial investigation through trial. Such rights of the accused include the right to face-to-face confrontation with witnesses.

There is probably no crime considered so heinous as the sexual abuse of a child. As Lloyd Martin, a crusader against the exploitation of children and an effective investigator for the Los Angeles Police Department, told Congress in 1977:

> To me, gentlemen, a crime against a child has no equal. It is worse than a homicide. A homicide is tragic, but it is over with. The victim of sexual exploitation has to live the rest of their

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[1] Roland Summit, M.D., Department of Psychiatry, University of California at Los Angeles, in *Interviewing Child Victims of Exploitation*, National Center for Missing and Exploited Children, February 1987, Introduction, p. v.

[sic] lives....[2]

Mr. Martin is not alone in this sentiment. The scores of child protection laws that have been enacted since 1977 bear witness to the fact that "[o]f all of the crimes known to our society, perhaps none is more revolting than the sexual exploitation of children...."[3]

Because of the serious nature of the crime and the intense feelings which it provokes, merely being accused of the crime of child sexual abuse will have a profound effect on the accused's life. As one former prosecutor put it,

> When an allegation of child sexual abuse is made against a man or woman and that allegation becomes in any fashion public knowledge, the person begins to suffer immediate and serious consequences. From that moment on, the person will never be viewed in the same fashion by his or her friends, neighbors, or even loved ones. He or she will be shunned by other persons within their community, especially those having small children.[4]

Such a serious stigma is placed on those accused of sexual abuse, that where the accused is innocent of the charges against

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[2] Testimony of Lloyd Martin, Investigator, Los Angeles Police Department, Juvenile Division, Sexually Exploited Child Unit, in *Sexual Exploitation of Children*, Hearings before the Subcommittee on Select Education of the Committee on Education and Labor, House of Representatives, 95th Congress, 1st Session, May 27, 1977, p. 46.

[3] *Child Sexual Abuse and Pornography Act of 1986*, 99th Congress, 2nd Session, House of Representatives, House Report 99-910, p. 3.

[4] Howson, R.N., "Child Sexual Abuse Cases: Dangerous Trends and Possible Solutions," *Champion, Journal of Trial Lawyers*, August 1985, p. 6.

him or her, he or she will undoubtedly quickly discover that "there is no opportunity for true 'vindication' within the criminal justice system.... The finding of 'not guilty' represents only a statement that there was insufficient evidence for a judge or jury to convict the individual."[5] As numerous authorities have concluded, "[o]nce [fictitious] allegations are raised, they are extremely difficult to rule out and the accused may never feel he has been 'cleared' of suspicions."[6]

It is a hallmark of our system of criminal justice that the accused is innocent until proven guilty beyond a reasonable doubt. Yet the deep concern which we all share for the health and safety of children threatens -- if not properly balanced with other values and principles upon which our society is based -- to reverse the equation and hold the accused responsible for proving his or her innocence.

In the current climate, many social workers, therapists, prosecutors, and "child advocates" believe that to question an accusation of child abuse is, at best, insensitive and socially irresponsible and, at worst, a betrayal of the child and collusion with those who would abuse them. Some child advocates have even arrogantly suggested that their task is not to discover the truth of an accusation, but to prove abuse once it has been alleged. As one social worker put it:

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[5] Ibid., p. 6.

[6] p. 52, Kaser-Boyd, N., "Fictitious Allegations of Sexual Abuse in Marital Dissolutions," *Family Law News, Offical Publication of the State Bar of California Family Law Section*, Vol. 11, No. 4, Fall, 1988, p. 52.

been uncovered. That children may lie about sexual abuse or be misled or coerced by adults into giving false testimony, wittingly or unwittingly, is a truism. Unfortunately, the emotional nature of cases involving allegations of child sexual abuse often prevents objectivity on the part of those whose job it is to ferret out and prosecute such abuse. The case descriptions and quotations set forth below conclusively support these contentions of Amicus.

- In Jordan, Minnesota, 24 adults were charged with molesting 37 children and 25 children were placed in foster homes during the course of an investigation of immense proportions, involving numerous state and federal agencies, including the FBI. Many of the accused were couples accused of engaging in sexual activities with their own children and in a variety of cruel and bizarre acts, including homicide, the torture and killing of animals, the production of pornography, and the practice of satanically-tinged sexual rites *en masse*. After 2 defendants were acquitted at trial and charges against another 21 defendants were voluntarily dropped by the prosecutor's office, the Minnesota Attorney General's office was asked to find out what had gone awry in the investigation.

The Attorney General's report revealed not only that the investigation into the initial allegations was severly flawed, but also that the child witnesses had fabricated much of the "evidence" at the behest of those conducting the initial investigation -- namely, the prosecution team, police, and child protection workers. The methods used by investigators were nothing short of inquisatorial. "In many cases," the Report states,

> children were removed from their homes and isolated from all family contact for prolonged periods, even though the children denied having been sexually abused. In some instances, the children did not "admit" that their parents had abused them until several months of such separation, marked by continuous questioning about abuse. In the most extreme cases, these children were also told that reunification with their families would be facilitated by "admissions" of sex abuse by their parents and other adults.[10]

The Jordan cases clearly demonstrate that prolonged interrogation of alleged child-victims "may result in confusion between fact and fantasy."[11] A therapist for one of the alleged victims told the Attorney General's office that

> repeated interrogation of this child has rendered him psychologicaly incapable of distinguishing among what actually happened, what he has previously described, and what has been told by others.[12]

Another serious flaw in the Jordan cases was the lack of corroborative evidence. With the single exception of the investigation of James Rud, the only adult in the Jordan scandal to be convicted of sexual abuse,

> none of the efforts to obtain incriminating evidence of sex abuse from the defendants or from other potential adult witnesses produced any fruit whatsoever.[13]

As the Scott County Report concluded,

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[10] *Report on Scott County Investigations*, Hubert H. Humphrey III, Attorney General for the State of Minnesota, February 12, 1985 (hereinafter cited as the "Scott County Report"), p. 9.

[11] Scott County Report, p. 11.

[12] Scott County Report, p. 11.

[13] Scott County Report, p. 14.

> The Federal Bureau of Investigation and the Minnesota Bureau of Criminal Apprehension concluded that there was no credible evidence of murders in Scott County connected to the activities of any child sex abuse ring. In addition, no reliable evidence of the existence of pornographic materials was discovered. Finally, their recommendation is that there is presently a lack of credible evidence which would provide a basis for pursuing any criminal charges in these cases.[14]

- In Honolulu, Hawaii, defendant James McKellar was accused of kidnapping 2 girls, ages three years and eleven months, and four and a half years, respectively, from their day care center and taking them to his house where he allegedly engaged in sexual acts with and photographed them. After a thorough investigation by the defense, the defense conclusively established that the children had been manipulated into fabricating a tale of abduction and sexual abuse which, in fact, could not ever have occurred. The charges against McKellar were dismissed by the court which ruled that since "the children have been led and taught by the adults to produce the hoped for responses" they lacked "personal knowledge, because they have no memory which the court can be assured is their personal recollection of the 'event'".[15]

In criticizing the method and manner in which the allegations were reported and investigated, the court stated

> Every adult accepted as fact that the Cathys had been abused and, consciously or unconsciously, their questions were shaped to satisfy their own beliefs. No matter how absurd or equivocal was a response, the adults interpreted it to fit their views. In the process, the Cathys were taught the information that has been ascribed to them."[16]

[14] Scott County Report, pp. 16-17.

[15] Hawaii v. McKellar, Crim. No. 85-0553, In the Circuit Court of the 1st Circuit, State of Hawaii, Order dated January 15, 1986 (Klein, R.G, Judge), pp. 15, 20.

The McKellar case not only points to the possibility that false testimony may be unwittingly elicted from children, but also indicates the dangers facing child witnesses who are so manipulated. Moreover, the case underscores the necessity for caution in investigating allegations of child abuse. The fact that allegations were pursued as far as they were is profoundly disturbing in light of the court's finding that overzealous investigation methods not only seriously disrupted the defendant's career and life, but caused the child-witnesses profound and certainly avoidable emotional harm. "Because the children now believe that such abuse occurred," the court found, "they are unable to separate the facts from the learned experience and, consequently, their behavior is just the same as if they were abused."[17]

Although we can only speculate, had McKellar gone to trial on the charges against him, his fate and the fate of his accusers may have depended upon a face-to-face confrontation and the jury's assessment of the reliability of the witnesses and testimony before them.

- In June 1984, a 5-year-old girl in Bakersfield, California reported that she and two other children had been sexually abused by two men. An investigation was begun immediately and, over the next year, children told investigators of satanic rites and the ritualistic murder of animals and children, and named several dozen victims and perpetrators, including, eventually, caseworkers and investigators themselves. By mid-1985, in a case which came to be

[16] Hawaii v. McKellar, p. 15.

[17] Hawaii v. McKellar, p. 19.

known as the "Satanic Ritual Case," twenty-one children had been removed from their homes and taken into protective custody.

Allegedly, children told investigators that

> they were made to stab babies, drink blood, worship Satan at a "bad church" where black candles burned during the ceremonies.... They recounted the ritualized murders of at least 12 babies and small children. The rituals also included the alleged sacrificing of animals, such as kittens, pigs, wolves, and dogs.[18]

Despite the lurid details provided by the children, the Bakersfield Sheriff's Department "uncovered no physical evidence to corroborate the children's stories and found much to disprove some of their statements."[19] This, however, did not dissuade the District Attorney's office from filing criminal complaints against nine suspects, charging them with sexual abuse. Several months later, the Sheriff's Department submitted eleven additional requests for felony complaints to the District Attorney, but these were rejected. Of the nine complaints issued during the course of the Kern County case, seven suspects were bound over for trial in Superior Court on various felony charges of child sexual abuse. Only one defendant, however, was tried and convicted. His conviction was later set aside on nearly every count and he was never re-tried on the few that remained.[20]

When it was apparent that the Satanic Ritual Case had fallen apart, California Attorney General John K. van de Kamp was called in to assess what went wrong. Not the least of what the

[18] Kern County Report, p. 9.

[19] Kern County Report, p. viii.

[20] Kern County Report, pp. 63-64.

Attorney General found wrong was the effect which the attitudes and methods employed by child abuse investigators had upon the gathering of evidence. For example, the report found that

> [T]he prevailing attitude of the interviewers was that 'children do not lie.' [As a result,] deputies generally did not question the children's statements, and they responded positively to the victims' statements only when the children revealed new allegations or said something to reinforce their previous allegations. They applied pressure on the children to name additional suspects and victims, and questioned them with inappropriate suggestions that produced the answers they were looking for.[21]

Some deputies gave positive reinforcement, such as "good girl" to the children's responses, instead of a neutral response such as 'okay'. This type of response encourages children to say things they think the interviewer wants to hear, and affects the

> direction of the interview.... [O]n occasion, they demanded answers from the children in a threatening manner."[22]

The Attorney General's report concluded that pressure exerted by interviewers "could have influenced the children's responses and affected their memories of past events. It was most likely a factor in the way the number of victims, suspects, and allegations grew during the course of the investigation."[23]

Others involved in the Satanic Ritual Case were also highly critical of the county's handling of the case. In a visitation hearing held for alleged child victim Michael Nokes, Superior Court Judge

[21] Kern County Report, p. 25.

[22] Kern County Report, p. 28.

[23] Kern County Report, p. 30.

Robert T. Baca stated on the record that the treatment of Nokes by county officials "was the most reprehensible thing that has ever come to my attention."[24] In an earlier visitation hearing, Judge Baca also stated that caseworkers had "brainwashed" the boy and had severely damaged him psychologically. "The molestation, if there was," Judge Baca stated,

> is not what caused this warped child. For the sake of the prosecution's case, this child was taken into the system and completely warped.[25]

- At a Nevada pre-school in 1984, a grand jury returned five indictments against three defendants alleging 69 counts of child sexual abuse involving 26 alleged child victims. The indictments against two defendants were eventually dismissed and a writ of mandamus was granted with respect to the third defendant after independent experts were called in at the insistence of defendants to evaluate the "evidence." Both the independent experts and the reviewing courts found serious inconsistencies and violations of the defendants' constitutional rights, including the failure of the prosecution to present substantial exculpatory evidence to the grand jury, conflicts of interest involving the examining therapists, and contamination of testimony.

Among the various types of contamination errors found by independent experts were

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[24] In the matter of Michael John Nokes, a Minor, State Superior Court, County of Kern, April 25, 1986, Hearing Transcripts, p. 23.

[25] In the matter of Angela and Michael Nokes, State Superior Court, County of Kern, April 25, 1986, Hearing Transcripts, p. 120. See also, Ross, A.S., "Warped Child, Twisted Justice," *San Francisco Examiner*, September 28, 1986, p. A8.

> (1) the interviewers either consciously or unconsciously followed a preconceived agenda, i.e. assumed facts, coerced the child, ignored the child's information, led the child, etc., (2) concertizing, i.e. where, as a result of having to repeat the allegations or being exposed to repetitive leading discussions, the child's memories of the event come from sources other than the event itself, (3) cross-contamination, i.e. using information gained from a source other than the child to question the child, and (4) systems contamination, i.e. contamination from influences outside the mental health sessions -- interactions with police, parents, or the media.[26]

Furthermore, the Court found that the evidence which the prosecution had withheld from the grand jury would have tended "to explain away the charges."[27] "The prosecution," the Court stated

> presented evidence to the grand jury that numerous children were sexually assaulted, either vaginally or anally. The testimony presented indicated that complete penetration had occurred and, in some instances, occurred more than once. At the time of its presentations, the prosecution possessed reports submitted by physicians who had examined the children. None of the physicians found any indicia of sexual penetration. The prosecution did not present these reports to the grand jury.[28]

With respect to the prosecution's failure to inform the grand jury that the examining therapists' children were among the alleged victims and that they stood to benefit monetarily from civil suits

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[26] Nevada v. Babayan, et al., Nos. 18713, 18732, Supreme Court of the State of Nevada, *per curiam* opinion, filed March 1, 1990, p. 7.

[27] Nevada v. Babayan, p. 22.

[28] Nevada v. Babayan, p. 21.

which were being preparted, the Nevada court ruled:

> By presenting as witnesses therapists with obvious conflicting interests without informing the grand jury of such conflicts, the District Attorney's Office undermined the purpose and function of the grand jury which is to assure that persons will not be charged with crimes simply because of the zeal, malice, partiality or other prejudice of the prosecutor, the government or private persons [cites omitted].[29]

- In January, 1985, five Sacramento, California men were indicted and jailed after six children told social workers and police of sex abuse, ritualistic abuse, and pornographic movies that involved the killing of three children on camera. All charges were eventually dropped. In dismissing charges against two of the defendants, the court found that two of the alleged child victims had been forced by their grandmother to give false testimony. The court stated:

> Without doubt, great harm and suffering was imposed on these children as a result of the conduct of Mrs. Bell [the grandmother of the children]. She is a very intelligent woman. She speaks well and writes in an articulate manner. She is also severely mentally ill.... I have concluded that, while Mrs. Bell appeared from her testimony not to recognize the harmful nature of her actions, the results of her conduct relating to her grandchildren were very damaging.... [emphasis in original][30]

> The testimony of both Dill children, Erika and Heather, was that the many stories of sexual abuse and other terrible

[29] Nevada v. Babayan, pp. 13-14.

[30] California v. Baker, et al., No. 85F-00135, Municipal Court, Sacramento Municipal Court District, City of Sacramento, State of California, *Ruling*, dated October 25, 1985 (Robie, R.B., Judge), p. 6.

> occurrences were agreed to by the children because they were just tired of being badgered by their Grandmother.[31]

> [Mrs. Bell] had no sensitivity toward children or their needs and seemed totally obsessed with matters sexual. When she told the Court that 3-3/4 year old Brian had a sexual look on his face and interrogated Heather about whether the alleged molest felt good, the perversity of her mental condition was glaringly apparent and was never refuted.[32]

The extent to which children are vulnerable to pressure from adults is glaringly apparent from the testimony of Erika Dill, one of the alleged child-victims, excerpts of which are reproduced below.[33] As the court noted, neither the children's mother, nor "a variety of others, including health professional and law enforcement officials, were able to recognize or do anything about the senseless harm being done to these children" by their grandmother[34], who interrogated the children for "a period of many months," sometimes daily, up to four hours at a time.[35] "It is hard to imagine any adult," Judge Ronald Robie wrote, "let alone a child, who could withstand such an interrogation."[36]

[31] California v. Baker, p. 6.

[32] California v. Baker, p. 10.

[33] California v. Baker, pp. 7-9.

[34] California v. Baker, p. 10.

[35] California v. Baker, p. 11.

[36] California v. Baker, p. 11.

Q. Why did you tell her that?
A. 'Cause she kept -- she kept harassing me. She kept saying, 'are you sure,' and stuff and I didn't want to keep going on with it, so I said yes. (page 122, lines 25-28)

* * *

Q. Did you ever tell anybody that you were ever taken to a house called Veryl's house?
A. Yes.
Q. And why did you tell somebody that?
A. Because my Grandma kept harassing me. (p. 123, lines 4-8)

* * *

Q. How were you able to describe what Veryl's house looks like if you never had really been there?
A. I just made it up. (p. 124, lines 23, 24)

* * *

Q. Why -- Erika, why did you tell your Grandma Doris about Cindy and Mindy being involved if they weren't?
A. Because she kept asking me, umm, 'Where there any other children?' and I said 'No,' and she kept asking and asking. (p. 133, line 6-10)

* * *

Q. Erika, why did you tell all those people that those three men had done bad things to you if they had not done bad things to you?
A. Because, when my Grandma started questioning me, she started, umm, harassing me.
Q. What do you mean 'harassing?'
A. She would keep asking, 'Are you sure?', and kept asking and asking a lot. (p. 139, line 26; p. 140, lines 1-5)

* * *

Q. Why did you tell your Grandma that?
A. Because she kept --'cause when she asked me, umm, she, she caught me in the living room and then she said, umm, 'Did' umm, 'anyone have any cameras,' and I said, 'No,' she

kept saying, 'Are you sure,' and kept asking me that, and I didn't like it and I wanted to get over with it to go outside so I said 'yes'. (p. 149, line 20-26)

* * *

The importance of a face-to-face assessment by the trier of fact also becomes clear in the Baker case. Called upon to make an assessment of the testimony given by the various witnesses, the court noted:

> Finally, and most importantly, Mindy and Cindy Dillon, both of whom were identified by Dana as being present and participating in the murders and molestation, denied that any such murders or molestation ever occurred. I found Mindy and Cindy Dillon to be credible witnesses; I carefully viewed their demeanor on the stand. Their testimony is clear.[37]

In evaluating conflicting statements of another alleged child victim, the court observed that her testimony "seemed tentative and lacked the strength of conviction of her other responses."[38] Based on all the testimony given and evidence presented and the observation by the trier of fact of the witnesses, all charges against the defendants were dismissed.

- In an acrimonious visitation proceeding in New Brunswick, New Jersey in 1987, the Court found that an "abuse validator," Eileen Tracy, had manipulated a five-year-old boy into alleging that he had been sexually abused by his father and grandparents. In awarding the father visitation rights, the Court ruled:

I am convinced that Ms. Tracy would have been able to elicit

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[37] People v. Baker, p. 17.

[38] People v. Baker, p. 12.

> the disclosure she elicited from Justin from many children his age who had not been sexually abused.... [H]er interview technique was subtley but powerfully leading and her conclusions spurious but misleading. Everyone seems to agree that Justin is a child who likes to please people, who was easily able to discern what Ms. Tracy wanted to hear and what she in fact was leading him to say, and he complied by making the charges he knew would bring approval.[39]

- In another case in Bakersfield, California, concurrent with the "Satanic Ritual Case" described above, three children testified that they and three other children were forced to perform sexual acts with over a dozen different adults and to participate in drug-taking, torture, and bizarre rituals which were allegedly filmed and photographed. No photographs or films were ever recovered and no corroborative evidence was ever offered with respect to the strange rituals that allegedly occurred at the homes of two of the defendants. Although three children testified at trial that the events never occurred, on August 2, 1985, seven defendants were convicted on literally hundreds of counts of sexual abuse.[40] They were later sentenced to a total of 2,600 years in prison.

The Pitts case demonstrates how a child, once outside the inquisitorial environment created by prosecution teams and/or caseworkers, may recant his or her false testimony. At *habeas corpus* hearings held on June 26 through 30th and July 12 through

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[39] Wolpert v. Wolpert, Transcript of Proceedings, Superior Court of New Jersey, Chancery Division, Family Part, Middlesex County, New Brunswick, New Jersey, Docket No. M6513-83, July 15, 1987, Hon. M. Epstein, J.S.C.

[40] See People of the State of California v. Pitts, et al., Superior Court Nos. 27651, 27774, and 28244, Kern County Superior Court. The jury verdict was rendered in a consolidated trial.

14, 1989, alleged child victim Christina Hayes stated that she had testified falsely at petitioner's trial, that none of the molestations to which she attested ever took place, and that she was never molested by any of the petitioners at any time.[41] She also testified that over a period of months the social worker in charge of the case, Carol Darling, and other investigators had made her believe that the defendants were "bad people" and that if she did not say that she had been molested, she might be taken from her father and placed in a foster home.[42] Two other children in the case had also recanted, one of them in the Spring of 1987, long after the defendants were convicted.[43] The defendants' attorney also discovered in the *habeas corpus* hearings that substantial exculpatory evidence was withheld by the prosecution and that certain expert testimony was patently false.[44]

The defendants' petition for *habeas corpus* is currently pending. It should be noted that the children in the Pitts case testified at trial behind a podium which allowed the jury to view the witnesses but denied a face-to-face confrontation with the defendants. That arrangement was made by the trial court after alleged victim Christina Hayes complained that she did not want to have to look at the

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[41] In the Matter of the Writ of Habeus Corpus of Pitts, et al., Nos. 3676, 3703, 3704, 3705, 3706, 3707, and 3708, transcripts of hearings held June 26-30 and July 12-14, 1989, Superior Court of the State of California, County of Kern (hereinafter Habeas Corpus Proceedings Transcript), p. 288.

[42] Habeas Corpus Proceedings Transcripts, p. 302.

[43] Petitioner's Brief, p. 156.

[44] See Petitioner's Brief, which contains frequent cites from the Habeas Corpus Proceedings transcripts.

defendants.[45] The lack of face-to-face confrontation between the alleged victims and the accused is one among many grounds upon which the defendants have taken a direct appeal of their case, now pending, to the Court of Appeals of the State of California, 5th District.[46]

III. The right of an actual face-to-face confrontation at trial between the accused and his or her accusers forms the core of the Confrontation Clause. Given the real possibility of false accusations, this right must not be abrogated.

A face-to-face confrontation between the accused and his or her accuser is guaranteed by the very wording of the 6th Amendment to the Constitution: "In all criminal prosecutions, the accused shall enjoy the right...to be confronted with the witnesses against him." Whether or not, as Justice Harlan wrote in California v. Green, 399 U.S. 149, 174 (1970), the right of confrontation "comes to us on faded parchment," the right of confrontation has a solid basis in American jurisprudence. As this Court has held previously, face-to-face confrontation between the accuser and accused is "essential to a fair trial in a criminal prosecution," Pointer v. Texas, 380 U.S. 400 (1965); see also Commonwealth of Pennsylvania v. Ritchie, 480 U.S. 39, 51 (1987) ["The Confrontation Clause provides two types of protections for a criminal defendant: the right physically to face those who testify against him and the right to conduct cross-examination"].

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[45] Reporter's Trial Transcripts, pp. 1433-34, California v. Pitts, et al., Superior Court Nos. 27641, 27774, 28244, Kern County Superior Court, 1985.

[46] California v. Pitts, et al., 85 Crim. F-006225, 5th District Court of Appeals, Fresno, California.

The rationale for the right of confrontation is threefold, namely, it

> (1) insures that the witness will give his statements under oath -- thus impressing him with the seriousness of the matter and guarding against the lie by the possibility of a penalty for perjury; (2) forces the witness to submit to cross-examination, the 'greatest legal engine ever invented for the discovery of truth'; (3) permits the jury that is to decide the defendant's fate to observe the demeanor of the witness in making his statement, thus aiding the jury in assessing his credibility. California v. Green, 399 U.S. 149, 158 (1970).

Furthermore, as this Court held in Coy v. Iowa, 487 U.S. 1012, 108 S.Ct. 2798 (1988), the right of confrontation is a "core guarantee" which "serves the general perception that confrontation is essential to fairness and helps to ensure the integrity of the fact-finding process by making it more difficult for witnesses to lie." Accord, Mattox v. United States, 156 U.S. 237, 242-3, 15 S.Ct. 337, 339-40 (1895) [The Confrontation Clause affords the accused "not only of testing the recollection and sifting the conscience of the witness, but of compelling him to stand face to face with the jury in order that they may look at him and gauge by his demeanor upon the stand and the manner in which he gives his testimony whether he is worthy of belief"]; Delaware v. Fensterer, 474 U.S. 15, 106 S.Ct. 292 (1985) [Case law "reflects the Court's long-standing recognition that the 'literal right to confront' the witness at the time of trial...forms the core of the values furthered by the Confrontation Clause"].

There is no reason to believe that the fact-finding process in cases involving child witnesses is any different from that involving adults. In fact, as anyone who has raised children is well aware, children not only have the capacity to lie that is equal to that of adults, but (as the cases above show) they are more vulnerable than

adults to gross or subtle manipulation. It is because false accusations of child abuse are often generated in a "supportive" environment designed to confirm and solidify findings of abuse and in which any opposition or challenge to the child's statements may be followed by suspicion, denial, derision, and increased attempts to shield the child from the exigencies of the adversarial process, that the accused's right of confrontation is paramount. Indeed, confrontation in the courtroom may be the only opportunity in certain cases to "ensure the integrity of the fact-finding process."

The Maryland statute in question in the instant case, Section 9-102 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland (1989 Repl. Vol.), requires case-specific findings that the child witness would suffer "serious emotional distress" which would result in the child's being unable reasonably to communicate prior to the employment of the one-way closed circuit television system. Notwithstanding such requirements, no evidence has been adduced to demonstrate the necessity for so drastic an action, which necessarily obliterates the defendant, jury, and courtroom from the child-witness' sight, and so abrogates a fundamental right granted the accused under the 6th Amendment. For instance, Petitioner has not shown why the one-way close circuit television is necessary when there are other systems -- such as a two-way closed circuit television system -- which may both satisfy the accused's right of confrontation and afford the child-witness the requisite level of protection.[47] In a field which as volatile as that of child sexual abuse, *Amicus* believes that the rights of the accused must be strictly interpreted and preserved.

[47] *Amicus* does not offer its opinion at this stage as to whether a two-way closed circuit television or some other system would satisfy the requirements of the Confrontation Clause. There may, in fact, be such a system and a constitutionally sound law authorizing its use, but that is not the case here.

Amicus believes this Court should again be mindful, as it was in Coy, that

> face-to-face pressure may, unfortunately, upset the truthful rape victim or abused child; but by the same token, it may confound and undo the false accuser, or reveal the child coached by a malevolent adult. It is a truism that constitutional protections have costs. Coy v. Iowa, supra, 108 S.Ct. at 2802.

Thus, while *Amicus* joins Petitioner in expressing its concern for the well-being of child witnesses who are called to testify against those who have allegedly brought them harm, *Amicus* submits that we must not hastily adopt ill-considered protective methods and strategies which abrogate time-honored rights. In this respect, a one-way closed circuit television cannot satisfy the requirements of the Confrontation Clause and must be found to be constitutionally prohibited.

CONCLUSION

For the foregoing reasons, the judgment of the Supreme Court of the State of Maryland, declaring Section 9-102 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland (1989 Repl. Vol.) to be unconstitutional, should be affirmed.

Respectfully Submitted,

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